REMARKS

This Application has been carefully reviewed in light of the Final Action mailed December 29, 2005. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 1-5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Beveridge in view of Feldman, et al. Independent Claim 1 recites ". . . transmitting light at a first wavelength carrying plain old telephone service telephonic signals from a first plurality of telephone related devices and at a second wavelength carrying TV signals from a TV signal source through an optical fiber from a first end to a second end; receiving said first wavelength of light and generating first electrical signals within a first frequency band and representative of said plurality of plain old telephone service telephonic signals; receiving said second wavelength of light and generating second electrical signals within a second frequency band and representative of said TV signals; . . . transmitting light at said first wavelength and carrying said return plain old telephone service telephonic signals and said TV related information through said optical fiber from said second end to said first end . . ." The Examiner readily admits that the Beveridge patent fails to disclose these features. The Examiner cites the Feldman, et al. patent in combination with the Beveridge patent to support the deficiencies thereof. However, the Feldman, et al. patent clearly recites a downstream wavelength of 1.5μm and an upstream wavelength of 1.3μm. Thus, the Feldman, et al. patent fails to disclose receiving first and second wavelengths of light as required by the claimed invention. Moreover, the Feldman, et al. patent fails to transmit light at the first wavelength that carries a return plain old

telephone service telephonic signals with TV related information as provided by the claimed invention. The wavelengths used by the Feldman, et al. patent over its optical fiber are different for downstream and upstream transport. Therefore, Applicant respectfully submits that Claims 1-5 are patentably distinct from the proposed Beveridge - Feldman, et al. combination.

Claim 7 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Beveridge in view of Feldman, et al. and further in view of Kitazawa, et al. Claim 7 includes the features discussed above with reference to Claim 1 and shown to be patentably distinct from the proposed Beveridge - Feldman, et al. combination. Moreover, the Kitazawa, et al. paper does not include any additional disclosure combinable with either the Beveridge or Feldman, et al. patents that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claim 7 is patentably distinct from the Beveridge - Feldman, et al. - Kitazawa, et al. combination.

This Response to Examiner's Final Action is necessary to address the new grounds of rejection and newly cited art raised by the Examiner. This Response to Examiner's Final Action could not have been presented earlier as the Examiner has only now raised the new grounds of rejected and introduced the new cited art in support thereof.

Applicant respectfully requests withdrawal of the finality of the present Office Action. "Before final rejection is in order a clear issue should be developed between the examiner and applicant." M.P.E.P. §706.07. A clear issue has not been developed between the Examiner and Applicant with respect to the Beveridge patent and Kitazawa, et al. paper as the Examiner has only now used the Beveridge

patent and the Kitazawa, et al. paper to support a rejection of these claims. According to M.P.E.P. §706.07, hasty and ill-considered final rejections are not sanctioned. "The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application." M.P.E.P. §706.07. "To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied; and in reply to this action the applicant should amend with a view to avoiding all the grounds of rejection and objection." M.P.E.P. §706.07.

Applicant responded to the first Office Action of July 1, 2005 and overcame the Feldman, et al. patent used by the Examiner to reject these claims. Now the Examiner comes back with the Beveridge patent as the primary patent in combination with the Feldman, et al. patent, which the Examiner did not use as a basis for any rejection of these claims in the previous Office Action. The Examiner now uses the Beveridge patent in the same manner as the Feldman, et al. patent was used in the previous Office Action. Thus, the Examiner has not followed the M.P.E.P. where it states that "[s}witching from . . . one set of references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early termination, i.e., either an allowance or a final rejection." Amendments to the claims in response to the previous Office

Action did not substantially change the subject matter of the claims to force the Examiner to now use the Beveridge patent in support of the claim rejections. Moreover, the Beveridge patent and the Kitazawa, et al. paper were available to the Examiner in preparing the first Office Action.

As a result, Applicant has not been given the cooperation of the Examiner as required and has been denied an opportunity to fully address the Beveridge patent and the Kitazawa, et al. paper and associated new grounds of rejection. By not providing Applicant the capability to fully respond to the Beveridge patent and the Kitazawa, et al. paper without the assurance that the response would be considered and entered, the Examiner has prematurely cut off prosecution of the present Application. Applicant has not been given a full and fair hearing to which it is entitled and a clear issue has not been developed as required. Therefore, Applicant respectfully submits that the final rejection is premature and that the finality of the present Office Action be withdrawn.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests reconsideration and full allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,
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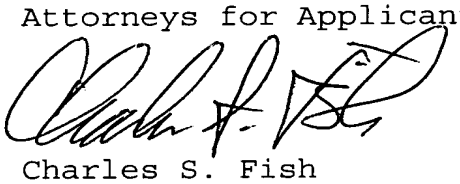

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